

*Amended from 5160 +
De Pans 2/27 (p. 550)*

Reprinted 3/13

Judiciary
Mann. Chair
Horn
Gentleman

FILED FEB 9 1984

SENATE FILE 2163

BY HORN

Passed ^{Senate} House, Date 3-5-84 (p. 652) Passed ^{House} Senate, Date 3-28-84
Vote: Ayes 42 Nays 6 Vote: Ayes 99 Nays 0
Approved April 16, 1984

made to resemble (652) w/d 3/12 (p. 774)

A BILL FOR

1 An Act relating to the definition of "best interest of the
2 child" during dissolution proceedings.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S-2163

1 Section 1. Section 598.1, Code 1983, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6. "Best interest of the child" includes,
4 but is not limited to, the opportunity for maximum continuous
5 physical and emotional contact possible with both parents,
6 unless direct physical or significant emotional harm to the
7 child may result from this contact. Refusal by one parent
8 to provide this opportunity without just cause shall be
9 considered harmful to the best interest of the child.

10 EXPLANATION

11 This bill defines "best interest of the child" as used
12 in dissolution proceedings.

13 The bill takes effect July 1 following its enactment.

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5160

Amend Senate File 2163 as follows:

1. Page 1, by inserting after line 9 the following:

"Sec. ____ . Section 598.41, subsections 1 and 2, Code 1983, are amended to read as follows:

1. The court, insofar as is reasonable and in the best ~~interest~~ interests of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure ~~a-minor~~ the child frequent and the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, unless direct physical harm or significant emotional harm to the child is likely to result from such contact with one parent, and which will encourage parents to share the rights and responsibilities of raising the child. The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody. If the court does not grant joint custody under this subsection, the court shall ~~state-in-its-decision the-reasons-for-denying-joint-custody~~ cite clear and convincing evidence, pursuant to the factors in subsection 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed. Before ruling upon the joint custody petition in these cases, the court may require the parties to participate in custody mediation counseling to determine whether joint custody is in the best interest of the child. The court may require the child's participation in the mediation counseling insofar as the court determines the child's participation is advisable.

The costs of custody mediation counseling shall be paid in full or in part by the parties and taxed as court costs.

Sec. ____ . Section 598.41, subsection 3, unnumbered paragraph 1, Code 1983, is amended to read as follows:

In considering what custody arrangement under ~~either~~ either subsection ~~1-ex~~ 2 is in the best interests of the minor child, the court shall consider the

5160
PAGE 2

1 following factors:

2 Sec. ____ Section 598.41, Code 1983, is amended
3 by adding the following new subsection before
4 subsection 4 and renumbering the subsequent
5 subsections:

6 NEW SUBSECTION. 4. Subsection 3 shall not apply
7 when parents agree to joint custody.

8 Sec. ____ Section 598.41, subsection 4, Code 1983,
9 is amended to read as follows:

10 4. Joint legal custody does not require joint
11 physical care. When the court determines such action
12 would be in the child's best ~~interest~~ interests,
13 physical care may be given to one joint custodial
14 parent and not to the other. If one joint custodial
15 parent is awarded physical care, the court shall hold
16 that parent responsible for providing for the best
17 interests of the child. However, physical care given
18 to one parent does not affect the other parent's
19 rights and responsibilities as a legal custodian of
20 the child. Rights and responsibilities as legal
21 custodian of the child include, but are not limited
22 to, equal participation in decisions affecting the
23 child's legal status, medical care, education,
24 extracurricular activities, and religious instruction.

25 Sec. ____ NEW SECTION. 598.42 REMOVAL OF CHILD
26 FROM STATE--PENALTY.

27 1. A parent with physical care custody of a child
28 for which a court has awarded visitation or custody
29 rights to a person other than the physical-care
30 custodial parent, shall not remove that child from
31 the state for the purpose of establishing a new
32 permanent residence unless the physical-care custodial
33 parent has given sixty days' prior written notice
34 of intention to move to the court and all other persons
35 having visitation or custody rights.

36 2. A person to whom the court has awarded a visita-
37 tion or custody right may, within sixty days of
38 notification of intention to remove the child from
39 the state, petition the court for an order enjoining
40 the physical-care custodial parent from removing
41 the child from the state. The case shall be given
42 calendar priority and handled expeditiously by the
43 court.

44 3. In an action to enjoin the removal of a child
45 from the state, the physical-care custodial parent
46 has the burden of proving that the establishment of
47 the child's permanent residence outside the state
48 is in the best interest of the child. However, career
49 advancement of the physical-care custodial parent
50 including promotion, better employment opportunity,

- 1 or career training shall be considered as a factor
- 2 in the best interest of the child.
- 3 4. A physical-care custodial parent who does not
- 4 provide sixty days' prior written notice of intention
- 5 to remove a child from the state, and so removes the
- 6 child to the detriment of another person's visitation
- 7 or custody rights, is guilty of a simple misdemeanor.
- 8 Sec. _____. The enactment of subsection 1 of section
- 9 598.41 constitutes a substantial change in
- 10 circumstances authorizing a court to modify a child
- 11 custody order pursuant to section 598.21 and chapter
- 12 598A."
- 13 2. Title page, by striking lines 1 and 2 and
- 14 inserting in lieu thereof the following: "An Act
- 15 relating to child custody."
- 16 3. By renumbering as necessary.

S-5160 FILED
FEBRUARY 27, 1984

BY COMMITTEE ON JUDICIARY
DONALD V. DOYLE, CHAIR

*(Adopted & amended by S-5213
3/5 (p. 651))*

SENATE FILE 2163

S-5213

- 1 Amend amendment S-5160 to Senate File 2163 as
- 2 follows:
- 3 1. By striking page 2, line 25, through page 3,
- 4 line 7.
- 5 2. By renumbering as necessary.

S-5213 FILED & ADOPTED
MARCH 5, 1984 *(p. 651)*

BY TOM MANN, JR.

Judiciary and Law Enforcement: Brammer, Chair: Clark, Hammond, Maulsby and Miller.

De Cal 3/22 (p. 1229)

SENATE FILE 2163

BY HORN

(AS AMENDED AND PASSED BY THE SENATE MARCH 5, 1984)

Passed Senate, Date 3-5-84 (p. 652) Passed House, Date 3-28-84 (p. 1414)

Vote: Ayes 42 Nays 6 Vote: Ayes 99 Nays 0

Approved April 16, 1984 (p. 1574)

A BILL FOR

1 An Act relating to child custody.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 2163

H-5868

1 Amend amendment H-5708 to Senate File 2163 as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 2, line 22, by inserting after the word
5 "arrangement." the following: "The court shall also
6 consider the court's determination that one parent
7 has sacrificed, and cooperated significantly more
8 than the other parent to provide an adequate and
9 stable environment or is significantly more responsible
10 for causing disintegration of the proper environment
11 for the child for reasons unrelated to the child's
12 welfare in determining the proper custody arrangement."

H-5868 FILED MARCH 27, 1984 BY WOODS of Polk

Placed out of order 3/28 (p. 1414)

SENATE FILE 2163

H-5869

1 Amend Senate File 2163 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, line 25, by inserting after the word
4 "arrangement." the following: "The court shall also
5 consider the court's determination that one parent
6 has sacrificed, and cooperated significantly more
7 than the other parent to provide an adequate and
8 stable environment or is significantly more responsible
9 for causing disintegration of the proper environment
10 for the child for reasons unrelated to the child's
11 welfare in determining the proper custody arrangement."

H-5869 FILED MARCH 27, 1984 BY WOODS of Polk

Roll 3/28 (p. 1414)

1 Section 1. Section 598.1, Code 1983, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6. "Best interest of the child" includes,
4 but is not limited to, the opportunity for maximum continuous
5 physical and emotional contact possible with both parents,
6 unless direct physical or significant emotional harm to the
7 child may result from this contact. Refusal by one parent
8 to provide this opportunity without just cause shall be
9 considered harmful to the best interest of the child.

10 Sec. 2. Section 598.41, subsections 1 and 2, Code 1983,
11 are amended to read as follows:

12 1. The court, insofar as is reasonable and in the best
13 interest interests of the child, shall order the custody
14 award, including liberal visitation rights where appropriate,
15 which will assure a-minor the child frequent-and the
16 opportunity for the maximum continuing physical and emotional
17 contact with both parents after the parents have separated
18 or dissolved the marriage, unless direct physical harm or
19 significant emotional harm to the child is likely to result
20 from such contact with one parent, and which will encourage
21 parents to share the rights and responsibilities of raising
22 the child. The court shall consider the denial by one parent
23 of the child's opportunity for maximum continuing contact
24 with the other parent, without just cause, a significant
25 factor in determining the proper custody arrangement. Unless
26 otherwise ordered by the court in the custody decree, both
27 parents shall have legal access to information concerning
28 the child, including but not limited to medical, educational
29 and law enforcement records.

30 2. On the application of either parent, the court shall
31 consider granting joint custody in cases where the parents
32 do not agree to joint custody. If the court does not grant
33 joint custody under this subsection, the court shall state
34 in-its-decision-the-reasons-for-denying-joint-custody cite
35 clear and convincing evidence, pursuant to the factors in

1 subsection 3, that joint custody is unreasonable and not in
2 the best interest of the child to the extent that the legal
3 custodial relationship between the child and a parent should
4 be severed. Before ruling upon the joint custody petition
5 in these cases, the court may require the parties to
6 participate in custody mediation counseling to determine
7 whether joint custody is in the best interest of the child.
8 The court may require the child's participation in the
9 mediation counseling insofar as the court determines the
10 child's participation is advisable.

11 The costs of custody mediation counseling shall be paid
12 in full or in part by the parties and taxed as court costs.

13 Sec. 3. Section 598.41, subsection 3, unnumbered paragraph
14 1, Code 1983, is amended to read as follows:

15 In considering what custody arrangement under either
16 subsection 1-~~or~~ 2 is in the best interests of the minor child,
17 the court shall consider the following factors:

18 Sec. 4. Section 598.41, Code 1983, is amended by adding
19 the following new subsection before subsection 4 and
20 renumbering the subsequent subsections:

21 NEW SUBSECTION. 4. Subsection 3 shall not apply when
22 parents agree to joint custody.

23 Sec. 5. Section 598.41, subsection 4, Code 1983, is amended
24 to read as follows:

25 4. Joint legal custody does not require joint physical
26 care. When the court determines such action would be in the
27 child's best interest interests, physical care may be given
28 to one joint custodial parent and not to the other. If one
29 joint custodial parent is awarded physical care, the court
30 shall hold that parent responsible for providing for the best
31 interests of the child. However, physical care given to one
32 parent does not affect the other parent's rights and
33 responsibilities as a legal custodian of the child. Rights
34 and responsibilities as legal custodian of the child include,
35 but are not limited to, equal participation in decisions

1 affecting the child's legal status, medical care, education,
2 extracurricular activities, and religious instruction.

3 Sec. 6. The enactment of subsection 1 of section 598.41
4 constitutes a substantial change in circumstances authorizing
5 a court to modify a child custody order pursuant to section
6 598.21 and chapter 598A.

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SF 2163
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SENATE FILE 2163

708

1 Amend Senate File 2163 as amended, passed, and
2 reprinted by the Senate as follows:

3 1. Page 1, line 5, by striking the word "contact"
4 and inserting in lieu thereof the words "parental
5 interaction and involvement".

6 2. By striking page 1, line 10 through page 3,
7 line 2, and inserting in lieu thereof the following:
8 "Sec. 100. Section 598.41, Code 1983, is amended
9 by striking the section and inserting in lieu thereof
10 the following:

11 598.41 CUSTODY OF CHILDREN.

12 1. The court shall order an award of custody,
13 pursuant to the best interest of the child, which
14 will assure a minor child the maximum opportunity
15 to continue the relationship which existed with each
16 parent before the separation or dissolution of
17 marriage. Unless demonstrated by clear and convincing
18 evidence that such frequent and continuing contact
19 and involvement with both parents after the parents
20 have separated or dissolved the marriage is contrary
21 to the best interest of the child, the custody award
22 shall specify frequent and continuing care and contact
23 with both parents and preserve the rights and
24 responsibilities of each parent as legal custodian
25 of the child. The custody award shall encourage the
26 parents to share the rights and responsibilities of
27 raising and nurturing the child.

28 2. Unless otherwise ordered by the court in the
29 custody decree, both parents shall have legal access
30 to information concerning the child, including but
31 not limited to medical, educational, and law
32 enforcement records. If the custody decree restricts
33 the noncustodial parent's access to information
34 concerning the child, the custodial parent shall
35 deliver to each affected provider of information a
36 certified copy of the restriction. The provider of
37 information shall restrict access only if a certified
38 copy has been so delivered. If the court subsequently
39 orders modification or removal of the restriction,
40 the noncustodial parent shall deliver to each affected
41 provider of information a certified copy of the order
42 and the provider shall thereafter restrict access
43 only as required under the order.

44 3. On the application of either parent, the court
45 shall consider granting joint custody in cases where
46 the parents do not agree to joint custody. If the
47 court does not grant joint custody under this
48 subsection, the court shall cite clear and convincing
49 evidence that joint custody is contrary to the best
50 interest of the child. Before ruling upon the joint

1 custody petition in these cases, the court may require
2 the parties to participate in a home study or mediation
3 counseling to determine whether joint custody is in
4 the best interest of the child. The court may require
5 the child's participation in the home study or
6 mediation counseling insofar as the court determines
7 that the child's participation is advisable.

8 The costs of the home study or mediation counseling
9 shall be paid in full or in part by the parties and
10 taxed as court costs.

11 4. When parents agree on a specific joint custody
12 arrangement, the court shall order an award of custody
13 which confirms that arrangement. The court shall
14 consider one parent's unreasonable and obdurate
15 resistance to joint custody to be a factor which shall
16 weigh in favor of awarding physical care or sole
17 custody to the other parent. The court shall consider
18 the denial by one parent of the child's maximum
19 opportunity for continuous interaction and involvement
20 with the other parent, without just cause, a
21 significant factor in determining the proper custody
22 arrangement.

23 5. Joint legal custody does not require joint
24 physical care. When the court determines such action
25 would be in the best interest of the child, physical
26 care may be given to one joint custodial parent and
27 not to the other. However, physical care given to
28 one parent does not affect the other parent's rights
29 and responsibilities as legal custodian of the child.
30 Rights and responsibilities of the legal custodian
31 include, but are not limited to, equal participation
32 in decisions affecting the child's legal status,
33 medical care, education, out-of-school activities,
34 and religious or moral instruction. If one joint
35 custodial parent is awarded physical care, the court
36 shall hold that parent responsible for allowing the
37 child continuing physical and emotional involvement
38 and interaction with the other parent. On the request
39 of the nonprimary care parent, unless determined to
40 be contrary to the best interest of the child, the
41 court shall award at least one annual period of
42 extended parental care to the nonprimary care parent.

43 6. When the parent awarded custody or physical
44 care of the child cannot act as custodian or caretaker
45 because the parent has died or has been judicially
46 adjudged incompetent, the court shall award custody
47 including physical care of the child to the surviving
48 parent unless the court finds that such an award is
49 not in the child's best interests."

50 2. Page 3, by striking lines 3 through 6 and

Page Three

1 inserting in lieu thereof the following:

2 "Sec. ____ The enactment of section 100 of this
3 Act constitutes a substantial change in circumstances
4 authorizing a court to modify a child custody order
5 pursuant to section 598.21 and chapter 598A when the
6 custodial parent is leaving the state with the child
7 or when the noncustodial parent requests a modification
8 of the court order for joint legal custody."

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SENATE FILE 2163

AN ACT

RELATING TO CHILD CUSTODY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 598.1, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 6. "Best interest of the child" includes, but is not limited to, the opportunity for maximum continuous physical and emotional contact possible with both parents, unless direct physical or significant emotional harm to the child may result from this contact. Refusal by one parent to provide this opportunity without just cause shall be considered harmful to the best interest of the child.

Sec. 2. Section 598.41, subsections 1 and 2, Code 1983, are amended to read as follows:

1. The court, insofar as is reasonable and in the best ~~interest~~ interests of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure ~~a-minor~~ the child frequent and the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, unless direct physical harm or significant emotional harm to the child is likely to result from such contact with one parent, and which will encourage parents to share the rights and responsibilities of raising the child. The court shall consider the denial, by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody. If the court does not grant joint custody under this subsection, the court shall ~~state in its decision the reasons for denying joint custody~~ clear and convincing evidence, pursuant to the factors in subsection 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed. Before ruling upon the joint custody petition in these cases, the court may require the parties to participate in custody mediation counseling to determine whether joint custody is in the best interest of the child. The court may require the child's participation in the mediation counseling insofar as the court determines the child's participation is advisable.

The costs of custody mediation counseling shall be paid in full or in part by the parties and taxed as court costs.

Sec. 3. Section 598.41, subsection 3, unnumbered paragraph 1, Code 1983, is amended to read as follows:

In considering what custody arrangement under ~~either~~ subsection ~~1~~ 2 is in the best interests of the minor child, the court shall consider the following factors:

Sec. 4. Section 598.41, Code 1983, is amended by adding the following new subsection before subsection 4 and renumbering the subsequent subsections:

NEW SUBSECTION. 4. Subsection 3 shall not apply when parents agree to joint custody.

Sec. 5. Section 598.41, subsection 4, Code 1983, is amended to read as follows:

4. Joint legal custody does not require joint physical care. When the court determines such action would be in the child's best ~~interest interests~~, physical care may be given to one joint custodial parent and not to the other. If one joint custodial parent is awarded physical care, the court shall hold that parent responsible for providing for the best interests of the child. However, physical care given to one

parent does not affect the other parent's rights and responsibilities as a legal custodian of the child. Rights and responsibilities as legal custodian of the child include, but are not limited to, equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

Sec. 6. The enactment of subsection 1 of section 598.41 constitutes a substantial change in circumstances authorizing a court to modify a child custody order pursuant to section 598.21 and chapter 598A.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2163, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved April 16, 1984

TERRY E. BRANSTAD
Governor